

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

UNITED STATES OF AMERICA)	DOCKET NO. 3:19CR35-KDB
)	
v.)	DEFENDANT'S REPLY TO
)	GOVERNMENT RESPONSE
ROBERT McCOY, JR.)	TO DEFENSE TRIAL BRIEF

NOW COMES Defendant ROBERT McCOY, JR., by and through undersigned counsel, and hereby replies to the government's Response to Defendant's Trial Brief.

The government's position is that the government has already determined McCoy's guilt of criminal contempt, which would essentially relegate the trial to a sentencing hearing. The government even uses McCoy's payment of the \$1,314.37 GAP payment as "as an admission that he has in fact breached the Agreement." The government has apparently forgotten that McCoy previously admitted this specific violation in Paragraph 3.c.i. of the Factual Basis filed along with the Pretrial Diversion Agreement. Thus, payment of that amount now admits nothing that was not already admitted.

The government takes it as established fact that McCoy has breached the Pretrial Diversion Agreement. McCoy denies that he has breached the agreement.

In the fourth paragraph of the Pretrial Diversion Agreement, the government agreed that before initiating prosecution for the underlying offense, it would furnish McCoy with notice specifying the condition of the Agreement which he has violated. No separate notice has been furnished, although the government in Paragraph 7 of its Motion

to Lift Stay (Document 25), stated that the alleged violation was failing to comply with any order or subpoena issued in connection with the bankruptcy/civil case.

As stated in Defendant's Trial Brief, Defendant McCoy denies that he has willfully and intentionally violated the Court's Orders to produce financial information and documents after the Pretrial Diversion Agreement was executed on May 23, 2019. These alleged violations are charged by this Honorable Court as constituting criminal contempt, a criminal charge as to which McCoy has the right to a trial where the charge must be proven beyond a reasonable doubt.

Respectfully submitted,

March 5, 2020

s/ Mark P. Foster, Jr.
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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above **DEFENDANT'S REPLY TO GOVERNMENT RESPONSE TO DEFENSE TRIAL BRIEF** has been duly served on the attorney listed below by e-mail service through ECF on this date:

Mark Odulio
U.S. Attorney's Office
227 W. Trade Street, 17th Floor
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March 5, 2020

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